

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Feb 18, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JEREMY JOHN GILBERT,

Defendant.

NO: 2:20-CR-154-RMP-1

PRETRIAL ORDER AND ORDER
GRANTING MOTION TO
CONTINUE

BEFORE THE COURT is Defendant's Motion to Continue Trial, ECF No. 24. Defendant moves for a continuance to allow additional time to investigate this case. The Government does not object to a continuance in this matter. *Id.*

A trial date of March 15, 2021, would deprive defense counsel of adequate time to obtain and review discovery and provide effective preparation, taking into account the exercise of due diligence. 18 U.S.C. § 3161(h)(7). In addition, the Court finds that the ongoing public health situation due to the novel coronavirus (COVID-19) pandemic inhibits the availability of an adequate spectrum of jurors and the ability of Defendant, witnesses, counsel, and Court staff to be present in the courtroom. *See* General Order No. 2021-4 (E.D. Wash. Feb. 10, 2021); CARES

1 Act, Pub. L. No. 116-136; State of Washington Office of the Governor,
2 Proclamation 20-25.6, *“Safe Start – Stay Healthy” County-by-County Phased*
3 *Reopening* (Jul. 7, 2020). Therefore, the Court finds that the ends of justice served
4 by ordering a continuance of proceedings in this matter outweigh the best interests
5 of the public and Defendant’s right to a speedy trial, pursuant to 18 U.S.C.
6 §3161(h)(7)(A).

7 Accordingly, **IT IS HEREBY ORDERED:**

8 **1.** Defendant’s Motion to Continue Trial, **ECF No. 24**, is **GRANTED**.

9 **2.** The current trial date of March 15, 2021, is **STRICKEN** and **RESET** to
10 **May 10, 2021**, at **8:45 a.m.** commencing with a **final** pretrial conference at **8:30**
11 **a.m.** Trial shall take place in **Spokane**, Washington.

12 **3.** The current pretrial conference date of March 2, 2021, is **STRICKEN**
13 and **RESET** for **April 27, 2021**, at **3:00 p.m. via video conference** from Spokane
14 County Jail. Counsel will receive connection instructions from the Court. The
15 public may listen to hearings by calling the Court’s public conference line at
16 **888.363.4749**, and entering **access code 4939688#** (no security code is required) five
17 minutes before the hearing begins. **ALL PARTIES MUST MUTE THEIR**
18 **PHONES, AND NO RECORDING OR REBROADCASTING IS PERMITTED.**

19 **4.** Counsel for defense shall notify Defendant of all hearings and ensure her
20 attendance at court.

1 **5.** Motions to Expedite, if any, shall be filed separately and noted for
2 hearing two (2) days from the date of filing, after informing opposing counsel of
3 such.

4 **6.** Discovery motions, pretrial motions, and motions in limine shall be filed
5 by **April 6, 2021**; responses are due **April 13, 2021**; and replies are due **April 20,**
6 **2021**. Counsel shall note their motions for hearing at the pretrial conference on
7 **April 27, 2021**. LCrR 12(c)(2).

8 **7.** Trial briefs, requested voir dire, witness lists, jointly proposed jury
9 instructions, and a table of proposed jury instructions shall be filed and served by
10 **April 30, 2021**, for the Court's consideration.

11 **(a)** The jointly proposed jury instructions should address only issues that are
12 unique to this case and shall include instructions regarding the elements of
13 each count, any necessary definitions, and a proposed verdict form.

14 **(b)** The parties shall provide the Court electronically with a table of
15 proposed, cited jury instructions. This table shall include:

16 **(i)** The instructions on which the parties agree;

17 **(ii)** The instructions that are disputed; and

18 **(iii)** The basis of any objection.

19 **(iv)** The jury instruction table shall be substantially in the following
20 form:

Proposed by	Instruction #	9th Cir. Cite	Objection	Response to objection
-------------	---------------	---------------	-----------	-----------------------

(c) In addition to the jury instruction table, each party shall address any objections they have to instructions proposed by any other party in a memorandum filed by **April 30, 2021**. The parties shall identify the specific portion of any proposed instruction to which they object supported by legal authority that supports the objection. Failure to file an objection to any instruction may be construed as consent to the adoption of an instruction proposed by another party.

8. *Pretrial Exhibit Stipulation*

(a) The parties shall prepare and file, by **April 30, 2021**, a pretrial exhibit stipulation that contains each party's numbered list of all trial exhibits with the opposing party's objections to each exhibit, including the basis of the objection and the offering party's brief response. All exhibits to which there are no objections shall be deemed admitted, subject to any objections at trial that could not be raised in advance. Failure to comply with this paragraph could be deemed to constitute a waiver of all objections. Do not submit blanket or boilerplate objections to the opposing party's exhibits. These will be disregarded and overruled.

(b) The pretrial exhibit stipulation shall be substantially in the following form:

Pretrial Exhibit Stipulation

Plaintiff's/Defendant's Exhibits

Exhibit No.	Description	If Objection, State Grounds	Response to Objection
-------------	-------------	-----------------------------	-----------------------

(c) Exhibits shall be pre-marked with the exhibit numbers that will be used at trial. Plaintiff's trial exhibits are to be numbered 1 through 199, and Defendant's exhibits are to be numbered 200 and following.

(d) Objections to exhibits and witnesses shall be heard at the final pretrial conference.

9. Trial Procedures

The following procedures shall be utilized at trial:

(a) The Court utilizes JERS (Jury Evidence Recording System) to allow evidence admitted for a trial to be viewed electronically via touchscreen monitor in the jury deliberation room upon the conclusion of the trial. Please note that the jury will receive a verbatim copy of the JERS exhibit list. Please carefully review and follow the instructions provided.

[JERS Instruction Sheet for Attorneys](#)

(b) The Court will conduct the majority of jury voir dire but allow counsel fifteen minutes to ask additional questions or to do more in depth exploration of issues raised by the Court;

1 **(c)** A total of thirteen jurors will be selected. Plaintiff shall have six
2 peremptory challenges, Defendant shall have ten peremptory challenges, and
3 each party shall have one challenge for the alternate juror. Fed. R. Crim. P.

4 24. The challenges shall be exercised alternately;

5 **(d)** Regular trial hours shall be from 8:45 a.m. to 12:00 noon, and 1:15 to
6 4:30 p.m.;

7 **(e)** The jurors will be provided with notebooks for note-taking and a copy of
8 preliminary instructions;

9 **(f)** Documents published to the jury by counsel shall be collected at the
10 conclusion of trial each day or following a witness's testimony regarding the
11 published document;

12 **(g)** A single photograph shall be taken of all witnesses following their
13 testimony for use by the jury to correlate a witness with the testimony he or
14 she provided. The photographs shall be maintained in a three-ring binder by
15 the Court. The photograph will have the witness's name on it and the date of
16 the witness's testimony. The photographs will be provided to the jury to assist
17 them during deliberations. Following deliberations, the photographs will be
18 destroyed by the Court and will not be a part of the record;

19 **(h)** Examination of witnesses shall be limited to direct, cross, redirect and
20 recross. Fed. R. Evid. 611(a);

1 (i) Counsel are encouraged to limit requests for sidebars by anticipating
2 legal and evidentiary issues so that the issues may be addressed before trial
3 begins each day, during the lunch hour, or after trial hours;

4 (j) During trial, counsel are encouraged to exchange lists of the next day's
5 witnesses and exhibits so that objections or legal issues may be anticipated
6 and resolved outside the normal trial hours;

7 (k) Counsel shall have the next witness to be called to testify available
8 outside the courtroom, to avoid delay; and

9 (l) An attorney's room for Plaintiff and for Defendant is available. Counsel
10 may inquire with the on-duty Court Security Officer for access to the room.

11 **10.** A Waiver of Speedy Trial Rights was signed by Defendant. ECF No. 25.
12 All time from the trial date of **March 15, 2021**, to the new trial date of **May 10,**
13 **2021**, is **EXCLUDED** for speedy trial calculations pursuant to 18 U.S.C. §
14 3161(h)(7).

15 **IT IS SO ORDERED.** The District Court Clerk is directed to file this Order
16 and provide copies to counsel.

17 **DATED** February 18, 2021.

18
19 s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
20 United States District Judge
21